Supreme Court, U.S.
FILED
AUG 27 1985
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-36

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

MICHAEL CEASAR,

Petitioner,

– against –

MERRILL LYNCH & CO., INC., ROGER E. BIRK, DAKIN B. FERRIS and WILLIAM A. SCHREYER,

Respondents.

REPLY BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

STULL, STULL & BRODY
Attorneys for Petitioner
6 East 45th Street
New York, New York 10017
(212) 687-7230

BEST AVAILABLE COPY

TABLE OF CONTENTS

	Page
PRELIMINARY STATEMENT.....	1
QUESTION RAISED BY RESPONDENTS IN THEIR BRIEF IN OPPOSITION.....	2
ARGUMENT.....	2
I. Petitioner Suffered Damages As A Result Of His Purchases Of Merrill Lynch Stock, Caused By Respondents' Failure To Disclose Merrill Lynch's Liability To Baldwin-United SPDA Purchasers.....	2
II. In Making His Purchases, Petitioner Relied On The Integrity Of The Market For Merrill Lynch Shares.....	6
CONCLUSION.....	7

TABLE OF AUTHORITIES

	Page
Burns v. Paddock, 503 F.2d 18 (7th Cir. 1974).....	5
Conley v. Gibson, 335 U.S. 41 (1957).....	6

No. 85-36

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1985

MICHAEL CEASAR,

Petitioner,

-against-

MERRILL LYNCH & CO., INC., ROGER E. BIRK, DAKIN B. FERRIS and WILLIAM A. SCHREYER,

Respondents.

REPLY BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

PRELIMINARY STATEMENT

This brief addresses issues first raised by respondents in their Brief in Opposition ("Opp. Br."). Respondents contend that petitioner suffered no damages due to his reliance on the

integrity of the market for Merrill Lynch & Co., Inc. ("Merrill Lynch") stock. In fact, the price of said stock was artificially inflated due to the wrongs alleged in the complaint, as supported by the affidavits and exhibits submitted below.

QUESTION RAISED BY RESPONDENTS IN THEIR BRIEF IN OPPOSITION

Was petitioner damaged by his reliance on the integrity of the market, where, in fact, Merrill Lynch stock was artificially inflated by respondents' fraudulent conduct?

ARGUMENT

I. Petitioner Suffered Damages As A Result Of His Purchases Of Merrill Lynch Stock, Caused By Respondents' Failure To Disclose Merrill Lynch's Liability To Baldwin-United SPDA Purchasers

Respondents attempt to lead the Court to believe that petitioner was not damaged

by the wrongs pleaded in the complaint. At Opp. Br. page 3, it is stated "that in purchasing his stock in the first instance, petitioner did not rely on artificially inflated market conditions at all, but rather believed that the market for Merrill Lynch stock was 'undervalued'." On the same page, however, they concede that there was a drop in the quoted price of Merrill Lynch stock following petitioner's first purchase and that at the time of his third purchase, the price had dropped approximately 30% from the time of his first purchase.

Respondents then go on to state: "According to petitioner's own securities expert, it [the drop in the price of Merrill Lynch securities] reflected the market's reaction to the news that Baldwin and its insurance subsidiaries

were suffering financial difficulties . . . ."

Respondents overlook the fact that petitioner's damage expert, John Hammerslough, submitted an affidavit in which he stated:

> 5. The results of this comparison indicate that Merrill Lynch was the worst performing stock of those compared during the class period; during August 31-September 27 when Baldwin's financial condition further deteriorated, culminating in its bankruptcy, and the Factor litigation was anticipated and finally brought; and finally during the day of September 27, when the market was first informed of the Factor suit and the Baldwin bankruptcy filing. In every case, Merrill Lynch was the worst performing stock.

The Hammerslough affidavit, submitted below, contained a table for the period April 25, 1983-September 27, 1983 which disclosed Merrill Lynch's stock in that period to be the worst performing of the brokerage house stocks compared. Table

2 of the Hammerslough affidavit disclosed that Merrill Lynch stock, between August 31, 1983 and September 27, 1983, suffered the worst losses of those compared. Table 3 again disclosed that Merrill Lynch stock was the worst performing of those compared during the period September 26-September 27, 1983. As quoted above, the market was first informed of the Factor suit on September 27th, causing Merrill Lynch stock to fall precipitately (A-68), clearly refuting respondents' contention that petitioner was not damaged by the wrongs alleged in the complaint.

Petitioner has submitted evidence that he was damaged. Respondents disagree with petitioner's expert. This dispute as to damages should not be disposed of on a motion for summary judgment. See, Burns v. Paddock, 503 F.2d 18, 24-25 (7th Cir. 1974). Based

upon Conley v. Gibson, 335 U.S. 41 (1957), this writ of certiorari should issue, affording petitioner the opportunity to prove his damages resulting from the wrongs alleged in the complaint.

II. In Making His Purchases, Petitioner Relied on The Integrity of the Market For Merrill Lynch Shares

Respondent's contention that petitioner did not rely on artificially inflated market conditions at all (Opp. Br., p. 3) is ludicrous in the face of petitioner's affidavit submitted below in which he clearly stated that he was aware of Merrill Lynch's announced record second quarter and first half earnings and that he never would have purchased his Merrill Lynch stock had he known of the huge Merrill Lynch exposure in connection with Baldwin-United Corporation ("Baldwin"). The true value of Merrill Lynch stock would have been

reflected only if Merrill Lynch had disclosed its Baldwin liabilities. Both on the date the Factor suit was commenced and four months later when Merrill Lynch materially restated prior earnings, the stock price fell substantially on the New York Stock Exchange.

CONCLUSION

To what degree Merrill Lynch's stock was inflated by its failure to disclose its immediate pending liability in the Baldwin situation and to what extent petitioner has been damaged is a battle that should be left to the experts and the jury at trial.

Respectfully submitted,

STULL, STULL & BRODY
6 East 45th Street
New York, New York 10017
(212) 687-7230

August 28, 1985